

--20. A method for controlling arthropods which comprises applying an effective amount of a compound as claimed in claim 1 to a site where said arthropods reside.

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21. The method according to claim 20, where the arthropod is an insect or acarid.

22. The method according to claim 20, wherein the site is a plant seed.

23. A method for controlling helminths which comprises applying an effective amount of a compound as claimed in claim 1 to a site where said helminths reside.--

REMARKS

This invention relates to heterocyclic acylsulfimides, to processes for their preparation and to their use as pesticides. Applicants discovered that the inventive compounds possess a good spectrum of activity against animal pests while being well tolerated by mammals and aquatic animals.

This Amendment adds two additional claims in excess of 20. A check for \$36.00 is enclosed to cover the cost of these new claims. It is believed that no further fee is required for the consideration of this Amendment. However, if an additional fee is due, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account 50-0320

This Amendment cancels claims 13 and 14, without prejudice or the intention of creating estoppel, and adds claims 21 to 23. Claims 21 and 23 find support in the specification on page 1, lines 10 and 11 as well as in claims 13, 14, 15 and 16. Thus, no new matter is added by this Amendment. Further, as claims 20 and 23 do not narrow the scope of the invention recited in claims 13 and 14, the application of the doctrine of equivalents is not affected.

In response to the Restriction Requirement, Applicants elect the invention of Group I directed to pyrimidines (X is CH), claims 1 to 8 and the method of claims 20 to 22 as the

elected method. Applicants traverse the Restriction Requirement especially as it relates to restriction in the method claims. Further, Applicants submit that the Restriction Requirement is in error with respect to claims 9 to 12 because these claims are not method of use claims. Claims 9 to 12 are composition claims and, in view of conventional PTO restriction practice, should be grouped with the compound claims of Group I. Applicants urge that the Restriction Requirement is improper, especially as it relates the restricting the compounds of Group I from their methods of use and possibly their compositions since the Restriction Requirement does not establish that search the elected compounds with the methods of use constitute an undue burden. Further, Applicants urge that it is contrary to public policy. Accordingly, modification or withdrawal of this requirement requested.

The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Applicants respectfully urge that the Restriction Requirement does not meet this second criteria, especially with respect to the inventions of Groups I and III. With respect to the restriction between pyrimidines and pyridines, Applicants submit that these compounds, while distinct, are so close in the art that one would want to search both search areas. With respect to Groups I and III, Applicants urge that searching both inventions would not constitute an undue burden as the search would overlap. The reason for this is because it is standard practice to examine compounds with their biological compositions and, as the compositions are searched in the same area as their method of use, there is no undue burden because the searches for the

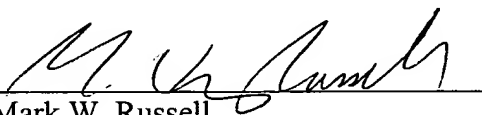
compositions and the biological method of use are the same. It is urged that restricting between arthropods and helminths, while distinct, is improper, because again these methods are searched in the same place.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement constitutes an undue burden to Applicants as well as the public. Hence, it is against public policy. If followed, the Restriction Requirement would require Applicants to file at least four more applications, depending upon how the Examiner treats the method of use claims. The cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the application originally only contains nineteen claims. Further, under GATT, the period of exclusivity for any patents which issue from the divisional application is greatly reduced. Similarly, the public is inconvenienced as they will not know whether or not Applicants will file divisional applications to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and modification of this Restriction Requirement is requested and an early action on the merits is earnestly solicited.

Respectfully submitted,

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